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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,649	03/01/2004	Franco Vallana	SBC1025USC1	9772

9561 7590 03/15/2007
POPOVICH, WILES & O'CONNELL, PA
650 THIRD AVENUE SOUTH
SUITE 600
MINNEAPOLIS, MN 55402

EXAMINER

GHERBI, SUZETTE JAIME J

ART UNIT	PAPER NUMBER
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3738

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/15/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/790,649	Applicant(s) VALLANA ET AL.	
	Examiner Suzette J. Gherbi	Art Unit 3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

In view of the Appeal Brief filed on 5/15/06 PROSECUTION IS HEREBY REOPENED. The Final Office action dated 2/15/06. has been withdrawn and a new Office action has been made.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37CFR 41.31 followed by an appeal brief under 27 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid then appellant must pay the difference between the increased fees and the amount previously paid.

The previous 112 1st rejection of claims 14-28 has been withdrawn. However, it is noted that applicant has not defined with clarity what is meant by the limitation of "at a zero point of the sinusoidal shape" in the specification and only merely recites the limitation.

Response to Arguments

Applicant's arguments with respect to claims 14-28 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 14-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gashino EP 0875215 in view of Dang et al. 6,193,747. Noting figure 1, **Gashino** discloses a tubular body having an interior surface and an exterior surface, the tubular body including a plurality of sinusoidal shaped annular elements (2) and a plurality of connection elements; each annular element being connected to at least one other annular element by at least two connection elements; a first end connected to an annular element at a zero point (see col. 6, lines 12-15) of the sinusoidal shape of the annular element and a second end connected to an adjacent annular element at a zero point of the sinusoidal shape of the adjacent annular element.

However, Gashino does not specify a plurality of recesses and an active agent being contained within the recesses; the recesses conferring on the elements where they are positioned a hollowed sectional profile of which the recesses occupy a portion of the area of the sectional profile, the geometry of the recesses being such that bending moments of inertia of the elements containing the recesses are not substantially reduce. Noting figures 5a-6b, **Dang et al.** teaches a tubular body with the above limitations. It would have been obvious to one having ordinary skill in the art at the time the invention was made to take the stent of Gashino and modify the strut to incorporate recesses for drug delivery as taught by Dang et al. because Dang states in col. 3, lines that other medical devices or prostheses are within the scope of the claimed invention and both stent are made of a Nitinol see (col. 3, line 34-35 of Gashino and col. 4, lines 26-28) and further both stents are formed by similar process making Gashino capable of having the recesses as claimed (see processes i.e. laser of '859 in col. 4, lines 50-67 and laser techniques of Gashino mentioned in col. 3, lines 50-58 and col. 4, lines 1-5.

Although Dang et al. does not specify a V-shaped depot/recess Dang et al. does disclose that the depots/recesses can be made of a variety of shapes (see col. 6, lines 56-66) and it is obvious that by varying the shape of the depot/recess are envisioned in order to modify the drug release rate and is deemed a design modification.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Suzette J-J Gherbi whose work schedule is Maxi-Flex off every other Friday and whose telephone number is 571-272-4751.

The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


SUZETTE GHERBI
PRIMARY EXAMINER
TECHNOLOGY CENTER 3700

07 March 2007